

12. Standards Report

Purpose of report

1. To inform the Authority of the proceedings of the Standards Committee meeting held on 8 February 2012 and consider recommendations put forward by the Standards Committee in relation to proposed changes to the standards regime under the Localism Act 2011.

Recommendations

The Standards Committee recommends that the Authority:

- i) authorises the Clerk to liaise with Herefordshire and Worcestershire Councils and in consultation with the Standards Committee to develop a common Code of Conduct for approval by the Authority on 20 June 2012;*
- ii) agrees in principle to appoint a Standards Panel and authorises the Clerk to prepare the relevant draft terms of reference and a framework for addressing future Code of Conduct complaints and any necessary investigations, for consideration at the Authority meeting on 20 June 2012;*
- iii) authorises the Clerk to commence the appointments process of a minimum of three independent members for resolving allegations of breaches of the new Code of Conduct; and*
- iv) agrees to extend its current standards regime until the commencement of the new regime under the Localism Act.*

Introduction and Background

2. On 15 November 2011, the Localism Act received Royal Assent. The Act brings about a number of key changes to the standards regime operating in local authorities and fire authorities. This report summarises those changes and highlights the practical implications for Hereford & Worcester Fire and Rescue Authority.
3. The Standards Committee met on 8 February 2012 and the Monitoring Officer sought its views on the practicalities of taking forward the new requirements. This report outlines both the Clerk's professional views and the Committee's views on the implementation of the new regime.

4. Prior to the Act coming into force the Authority considered the possible changes to the regime and made a number of points relating to issues of principle. In particular it decided:
- to adopt a voluntary Code of Conduct for Members when the current Standards regime expires;
 - that the voluntary Code should mirror the current Code, save where amendments are required arising from the provisions of the Localism Act;
 - that the Authority should have regard to the response of the constituent bodies when dealing with this matter; and
 - that Members should continue to receive appropriate training in standards and ethics.

The Localism Act – Key Changes to the Standards Regime

5. In summary, the Act brings about several fundamental changes to the standards regime. The overseeing body, Standards for England, is abolished as is the requirement for a national Code of Conduct. Instead, Authorities are required to draw up their own Code of Conduct for Members and it will be a criminal offence for Councillors deliberately to fail to register or disclose a pecuniary interest. The Localism Act:
- abolishes Standards for England;
 - abolishes the necessity for Authorities to establish and maintain a Standards Committee;
 - requires Authorities to draw up their own Code of Conduct for Councillors and co-opted Members;
 - requires Authorities to include in their Codes the provision for the registration and disclosure of pecuniary and non-pecuniary interests;
 - makes it a criminal offence for a Member knowingly to fail to register or disclose a pecuniary interest;
 - requires Authorities to make arrangements for investigating complaints that a Member has breached the Code;
 - specifies that Authorities must appoint at least one independent person whose views should be sought and taken into account before it decides on an allegation; and
 - clarifies the rules on predetermination and bias when Members are participating in decision making.

Standards Committee

6. Under the Act, the Authority continues to have a duty to 'promote and maintain high standards of conduct by Members and co-opted Members of the Authority' (Section 27). However, the Authority is no longer under a requirement to appoint a Standards Committee as a means of fulfilling this responsibility. If the Authority does choose to appoint a Standards Committee there is no requirement that this should contain Independent Members. It is the Clerk's view that whilst this role is not significant and other committees of the Authority, namely the Audit Committee, could have its terms of reference expanded to include the requirement to promote maintain high standards of conduct by Members, a Standards Panel which includes independent members of the public does have some value. Such a Panel would be particularly useful to avoid the perception of total self-regulation giving transparency to this area of work which is considered to be beneficial. It would also be useful on occasion for the Panel to act as a sounding board for the Monitoring Officer.
7. It is the Standards Committee's view that a consultative Standards Panel made up of both Elected Members and Independent Members would give the Authority and the public some reassurance in this area, avoiding the perception of a 'closed shop.'
8. If the Authority were to agree to put in place a Standards Panel it is suggested that the Clerk prepare terms of reference for agreement at the next Authority meeting.

Code of Conduct

9. In the original version of the Localism Bill, it had been intended that it would be entirely voluntary for Authorities to adopt a Code of Conduct for its Members. During the passage of the Bill through the House of Lords, this was changed. It will now be a requirement for Authorities to adopt their own Code of Conduct.
10. As now, these must be in accordance with the Nolan principles of public life. The Authority can revise its existing code or adopt another one to replace it. However, it makes sense for the Authority to work with the County and District Authorities in Herefordshire and Worcestershire to achieve a common Code of Conduct, if possible. This would be useful in achieving clarity for the public and also for those Councillors who are Members of both County and a District Authorities as well as the Fire Authority.
11. Parish and Town Councils will also be required to adopt a Code of Conduct but they can do so by adopting the Code of its principal Authority. If the same Code can be adopted by the two Counties and District neighbours, this creates the opportunity of harmonisation in this area throughout all tiers of local government in Herefordshire and Worcestershire.
12. The Code of Conduct must contain:

- a statement of the principles of public life; and
 - provisions for the registration and disclosure of pecuniary and non-pecuniary interests
13. The Authority has three options, it can amend its current code of conduct, or it can adopt a new model currently being developed by ACSeS (Association of Council Secretaries and Solicitors) and the LGA (Local Government Association) or it could develop its own model.
14. In any event the Authority must adopt a Code of Conduct at its next meeting. Regulations on the definition of what constitutes a pecuniary interest are still awaited as is the completion of the model codes. Given the logistical problems in meeting the July deadline it is suggested that the Authority authorises the Clerk to liaise with other authorities and in consultation with the Standards Committee review the options and make a recommendation on the appropriate Code at the next meeting of the Authority in June 2012.

Investigation of allegations

15. The Authority must also:
- make arrangements for investigating and deciding upon allegations made that the code has been breached; and in so doing must;
 - include provision for the appointment of one or more independent person whose views must be sought before a decision is made; and whose views can be sought by a Member who is the subject of the allegation.
16. The Clerk suggests that she develops a framework to address complaints and any necessary investigations in a manner which minimises bureaucracy and is commensurate with the issue. The underlying process should enable the monitoring officer in consultation with the independent person to address complaints quickly and only where a complaint is so significant that she is unable to resolve it that the Standards Panel consider the allegations and make recommendations to the Authority. The Act is silent on possible sanctions for breach of the Code (other than for failure to declare a pecuniary interest) but further regulation on this issue may be forthcoming.
17. There is some uncertainty at the moment as to whether the current independent persons on the Authority's Standards Committee are eligible or not to continue in this role under the new arrangements. The Act appears to be ambiguous and could indicate that current independent persons are by implication debarred from appointment as the independent persons envisaged under the Localism Act. Urgent enquiries are being made to ascertain the Government's intention in this matter. In any event it is suggested that at least three independent persons are appointed to avoid any conflict of interest issues. The Act requires that a process of appointment be undertaken by the end of June, involving the advertisement and interview of potential candidates with a recommendation of the appointment to the June meeting of the Authority. Members are asked to authorise the Clerk to oversee the

appointment process with an appointment panel being made up of Group Leaders who will make the recommendation on appointment to the Authority.

Register of Interests

18. The Authority's Monitoring Officer must establish and maintain a Register of Interests of Councillors and Co-opted Members. It is for the Authority to determine what details are entered into the Register. No entry is required to be retained once the person no longer has the interest. The Register must be published on the Authority's website and be available for public inspection.
19. No specific mention is made in the Act to the registration of gifts and hospitality and this will therefore be a matter for the Authority to determine as to the provisions that should be included in its Code of Conduct.
20. It is suggested that as part of the development of the Code of Conduct the Clerk will make recommendations for an appropriate register for members' interests.
21. It will be a criminal offence for Councillors deliberately to fail to register or disclose a pecuniary interest. Although, as already mentioned earlier in the report government has yet to specify what constitutes a pecuniary interest.

Predetermination and Bias

22. The rules on predetermination and bias have been developed over time to ensure that Councillors come to meetings with an open mind on, for example, in relation to the determination of planning applications. However, the changes now brought forward under the Localism Act are based on the Government's view that this has stifled local debate and discussion by making Councillors fearful of being accused of bias when campaigning, talking with constituents or expressing views on local issues.
23. The Act now makes it clear that it is proper for Councillors to take an active part in local discussions and ensures that they should not be open to legal challenge as a result. This is based on the perspective that Councillors will be better able to represent their Constituents and enrich local democratic debate.
24. Training will be given to all Councillors on the new provisions once the code and other issues are agreed by the Authority in June.

Conclusion

25. Whilst there are still some ambiguities to be addressed by the Government, the Standards Committee has proposed a way forward so that the Authority can address the requirements of the Localism Act by the deadline of 1 July 2012.

Financial Considerations

Consideration	Yes/No	Reference in Report i.e. paragraph no.
There are financial issues that require consideration	No	

Legal Considerations

Consideration	Yes/No	Reference in Report i.e. paragraph no.
There are legal issues e.g. contractual and procurement, reputational issues that require consideration	Yes	Whole report

Additional Considerations

26. The table below sets out any additional issues arising from the proposals contained in this report and identifies the relevant paragraphs in the report where such issues are addressed.

Consideration	Yes/No	Reference in Report i.e. paragraph no.
Resources (e.g. Assets, ICT, Human Resources, Training & Development, Sustainability).	Yes	Para re Independent Members
Strategic Policy Links (e.g. IRMP, Authority Plan, Equality & Diversity, Partnerships, Environmental Impact).	No	
Risk Management/Health & Safety (e.g. risk management and control measures, risk register score).	No	
Consultation with Representative Bodies	Yes	Consultation with Monitoring Officers from Worcestershire and Herefordshire.

Supporting Information

Background papers:

- Localism Act 2011
- Standards Committee Agenda and papers 17 March 2011

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